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MICHAEL RODAK, JR., CLERK

No. 77-255

In the
Supreme Court of the United States

OCTOBER TERM, 1977

SUNDSTRAND CORPORATION,

Petitioner,

vs.

SUN CHEMICAL CORPORATION, RAYMOND F.
RYAN and THOMAS B. HART, JR., EXECUTORS OF
THE ESTATE OF JOHN B. HUARISA,

Respondents.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Seventh Circuit

APPENDIX OF RESPONDENTS

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APPENDIX OF RESPONDENTS

I. EXCERPTS FROM SUNDSTRAND AMENDED COMPLAINT AND FROM AMENDED ANSWER OF DEFENDANTS SUN CHEMICAL CORPORATION AND JOHN B. HUARISA

Paragraph 6 of Amended Complaint

6. On or about January 9, 1969, Sundstrand and Huarisa entered into an Agreement (the "Agreement"), a copy of which is attached hereto as Exhibit I and made a part hereof, whereby Huarisa sold to Sundstrand 223,190 common shares of SKI stock, at a price equivalent to \$30 per share. In payment of the purchase price, Sundstrand thereby transferred to Huarisa 5,686 shares of common stock of Sundstrand (valued at \$58- $\frac{7}{8}$ per share, the closing price on the New York Stock Exchange on January 8, 1969) and agreed to pay the balance of \$6,360,915.00 in accordance with a certain offer to sell, a copy of which is appended to the Agreement as Exhibit B. On or about February 6, 1969, Sundstrand, at the direction of Huarisa, paid to National Boulevard Bank of Chicago the full balance of \$6,360,915.00 and took delivery of certificates for the 223,190 common shares of SKI stock.

6. Answering the allegations of paragraph 6, that on about January 6, 1969, Sundstrand and Huarisa entered into an Agreement (the "Agreement"), a copy of which is attached to the amended complaint as Exhibit I, whereby Huarisa sold to Sundstrand 223,190 common shares of SKI stock at a price equivalent to \$30 per share, that in payment of the purchase price, Sundstrand thereby transferred to Huarisa, 5,686 shares of Sundstrand

common stock valued at \$58- $\frac{7}{8}$ per share, the closing price on the New York Stock Exchange on January 8, 1969, and agreed to pay the balance of \$6,360,915 in accordance with a certain offer to sell, a copy of which is appended to the Agreement as Exhibit B, and that on about February 6, 1969, Sundstrand, at the direction of Huarisa, paid to National Boulevard Bank of Chicago the full balance of \$6,360,915 and took delivery of certificates for the 223,190 common shares of SKI stock, these defendants deny the said allegations, except they admit that on January 9, 1969, Sundstrand and Huarisa entered into the Agreement attached to the amended complaint as Exhibit I, admit that the closing price of Sundstrand common stock on the New York Stock Exchange on January 8, 1969 was \$58- $\frac{7}{8}$ per share, and admit that on February 6, 1969, Sundstrand took delivery of certificates representing 223,190 shares of SKI common stock. Further answering, these defendants state that on January 9, 1969 Sundstrand promised to reimburse Huarisa for his payment (on January 8, 1969) of \$334,785, that such reimbursement was to take the form of delivery to Huarisa of 5,686 shares of Sundstrand stock valued at \$58- $\frac{7}{8}$ per share, that such shares were delivered to Huarisa on about March 3, 1969, that in consideration for Sundstrand's promise to deliver such shares Huarisa assigned to Sundstrand his right, pursuant to the offer to sell appended to the Agreement as Exhibit B, to purchase 223,190 shares of SKI stock at \$30.00 per share, that Huarisa made the aforesaid payment of \$334,785 to prevent the right to purchase those 223,190 shares from lapsing, and that,

on about February 6, 1969, approximately two weeks after the termination of acquisition negotiations, Sundstrand, voluntarily, without obligation, after a full and complete investigation of SKI, and with full knowledge of all material facts paid to National Boulevard Bank of Chicago, as agents for the sellers of such SKI shares, \$6,360,915 even though the offer to sell, if accepted, called for payment of only 20% of the purchase price by February 8, 1969 and the balance by April 9, 1969.

II. ETHINGTON DIRECT TESTIMONY AS TO WHAT SUNDSTRAND RELIED UPON IN ENTERING JANUARY 9, 1969 AGREEMENT

134 Mr. Jenner: Is it offered?

The Court: It is offered and accepted.

Mr. McSweeney: It was admitted.

Mr. Jenner: If your Honor please, as to Mr. Meers we would —

The Court: You don't have to tell me that each time, I mean —

Mr. Jenner: Well, I just worry.

The Court: You want to insulate him all the way through, do you?

Mr. Jenner: Yes, sir.

The Court: I got the message to begin with.

Mr. Jenner: All right.

The Court: There is no jury.

Mr. Jenner: Yes, your Honor.

The Court: And your objection that Mr. Meers is a bystander, or whatever you want to call him later on—I will accept it for the time being.

Mr. Jenner: All right.

The Court: Until I hear some evidence.

By Mr. McSweeney:

Q. Mr. Ethington, in having Snudstrand enter this agreement of January 9, 1969, Plaintiff's Exhibit No. 4, to buy the stock, on what did you rely in making that decision?

135 Mr. Freehling: Your Honor, I object to that question.

The Court: I think that is one of the essential elements in the case. I think the witness is at least entitled to state, subject to your cross examination, as to what factors he took into consideration.

By The Witness:

A. I relied on the earnings statements that had been given to me of Standard Kollsman Company, particularly of the 86 cents a share, and also on their forecast of making \$2.13 a share, and I also relied on, when I asked Mr. Meers if he thought these earnings were reasonable when we negotiated the potential merger, and he stated yes.

I also relied on the published documents of their annual report and other information that I had.

By Mr. McSweeney:

Q. Did you rely on the statements concerning the 1968 earnings?

A. Yes, I did.

Mr. Freehling: I object, your Honor.

The Court: I sustain the objection. I recognize that sooner or later, this evidence is going to get in, but do it the right way. If the witness forgets, you can take it up from there some other way.

136 Mr. McSweeney: All right.

The Court: I sustain the objection.

By Mr. McSweeney:

Q. Would you state whether there was anything else that you recall that you were relying on?

Mr. Freehling: Your Honor, I object.

The Court: Now he may answer. Overruled.

Mr. Freehling: Your Honor, this is the invidious character of a leading question. It suggests the answer to the witness so that the questioner can then say —

The Court: I suppose he is entitled to exhaust the witness' recollection, isn't he?

Mr. Freehling: He certainly is but not by asking leading questions.

The Court: As to whether he relied on anything else?

Mr. Freehling: But after telling the witness what he would like to hear, he then asks an exhausting recollection question.

The Court: Having gone through this case once, I think your gentlemen pretty well know what the answer is going to be in any event. So, I think we are sparring without results.

The objection is overruled.

137 By The Witness:

A. Yes, I relied on the earnings for 1968 of the 86 cents that were reported and the \$1.16 that was forecasted, and also on the other projections that were made to me by Mr. Huarisa and also by Mr. Meers.

138 By Mr. McSweeney:

Q. Well, by other projections, did you rely on the statements as to the financial condition?

The Court: No. I will sustain the objection before it is made.

Mr. McSweeney: All right.

Mr. Freehling: Thank you.

By Mr. McSweeney:

Q. What else, if anything, did you rely on?

A. I also relied on the fact that Mr. Huarisa stated to us that the Avionics, the operation had turned around, and that the company's business was going very well.

Q. Was there anything else that you can recall?

A. Not that I can recall.

Q. Mr. Ethington, after January 9, 1969, what was your next contact, if any, with a representative of SKI, Standard Kollsman?

A. I called Mr. Meers from Rockford, Illinois, at his office at White, Weld.

Q. When was that, sir?

A. About January 20, 1969.

Q. To your knowledge, was anyone else in on the phone conversation?

A. Not to my knowledge.

Q. Would you state, sir, what was said by you and

III. SUNDSTRAND'S ADVERSE INFORMATION ABOUT SKI

(1) Meeting of November 19, 1968

Schuette Trial Testimony (1st Trial)

2858 was something that he was very familiar with as a result of having come from a TV manufacturer, and he still had some real problems with the tuner division. He said that most of his competitors had gone to Taiwan for manufacturing, and that he was having an awful time competing with them making it in the United States. He said that he was making plans to have the tuner made in Mexico, and here he felt that he could get the same advantages that his competitors were getting by having it made in Taiwan.

He said that the Casco Division was a good solid operation and a good money maker. He said that Avionics had lost money, that he had some real problems, but that he had turned it around. He said that some of the real problems in Avionics were essentially due to preproduction costs, high development costs, and overorganization.

I said to Mr. Huarisa that I sympathized with the problem of overorganization because this is generally the way in which prime contractors operate, that they force you to set up project teams to follow their particular contract, and this generally causes you then with the overorganization to have excess overhead costs associated with your particular product.

2859 So I sympathized with him very much.

With regard to preproduction costs and development, I said that anyone who is in the aviation business is quite familiar with this type of cost accumulation; that as long as we had to price on a learning curve, any one of us that are in the accessory business run into this type of cost accumulation; that in general in our operations — I stated that in our operations we looked at the amortization of pre-production costs and development costs in two ways: One, in a high-risk category and one in a low-risk category. The low-risk category was one in which you won the contract by technical evaluation because you had an engineering capability in a particular product area and you designed a product specifically for the particular end vehicle. In this particular situation your only problem really is what is the life of that end vehicle because once you have won the technical evaluation, you can certainly set up your pre-production costs and amortize them over the anticipated quantity of the production of the vehicle and it is quite safe because you won't get thrown off of the job unless you really fall flat on your face.

In the high-risk category is where you design a product to a military specification and sell it interchangeably in competition with other manufacturers who make exactly the same product. Now here price-delivery become very serious factors and the matter of amortization becomes a real high risk item.

(2) Meeting of December 3, 1968

Huarisa Deposition Testimony

103 Q. Who was present there?

A. Mr. Olson, Mr. Sadler, Mr. Ethington, Mr. Schuette and Mr. Gustafson.

Q. Would you tell us what was said at this meeting.

A. Well, I repeated what I had said at the November 19th meeting for the benefit of Sadler and Olsen and Gustafson.

Q. Will you tell us what you said at the meeting.

A. I told them the problem that I had had — the ones that were making a profit, the possibility of our tuner operation, and where we were setting up in Mexico, our new solid state tuner, and pointed out to them that — at that time they asked me again if I could deliver control of the company and I said I could, because I had first refusal with the Burke stock.

Q. What else did you say about that, anything?

A. And I think we discussed the '69 earnings again, and I think a question was brought up about '68 earnings, and I told them the same thing I told them at the Chicago Club, that I couldn't predict anything, because unless we got some orders we would be
104 faced with some write-offs.

Q. Who asked you about the '68 earnings?

A. It could have been any one of them.

Q. And what you said was you couldn't predict anything because unless you got some orders you would be faced with write-offs?

A. With some write-offs.

Q. Is there anything else you said about that?

A. Not that I can recall.

Q. Okay. What did you say about the '69 earnings?

A. The same thing I said at the Chicago Club.

Q. What was that? Will you state what you said at the meeting in the apartment on December 3rd?

A. The earnings would be between two dollars and two-fifty, but if they were going to make a proposal to use the two dollar figure, that I am sure they didn't want to dilute their earnings and we didn't want to dilute ours.

Q. What else was said?

A. I think someone made the statement that they would earn between three-twenty-five and three-seventy-five in 1969.

Q. Who said that?

105 A. I don't remember whether it was Mr. Ethington or Mr. Schuette, or one of them.

Q. Did you tell them what the write-offs would be if you didn't get some orders?

A. No, I did not.

Q. You hadn't told them that at the meeting at the Chicago Club, either, had you?

A. Yes, I had.

Q. Well, did you give them any idea as to whether the '68 performance would show the company to be in the red or in the black, or what?

A. No comment was made.

Q. No comment was made.

So, in other words, they were left to assume that it could be in the red?

A. I don't know what they could assume.

Q. Did you indicate at the meeting at the Chicago Club on November 19th, how much the write-offs would be?

A. No, I didn't.

Q. You merely told them what contracts or programs they would be related to, is that it?

A. No.

Q. No.

106 A. We did not discuss that.

Q. Oh, you didn't?

A. No, we didn't discuss the programs.

Q. Well, I want to know — going back for a moment to the meeting at the Chicago Club on November 19th, you did not discuss the programs there, either?

A. That's correct.

Q. The extent of your statement to them at the Chicago Club on November 19th was that there would be some write-offs if you didn't get some orders?

A. Roughly correct.

Q. Well, will you articulate it and make it as exactly correct as you can?

A. Well, that's about as correct as I can make it.

Schuette Deposition Testimony

161 Well, I guess I am confused. Let's start over.

Was there, in fact, Mr. Schuette, some discussion by Mr. Huarisa on December 3rd of accounting differences between himself, or Standard Kollsman and Mr. Burke?

A. The discussions related to his ability as an operating man and his ability to relate that to the accounting for profit and loss.

Q. The discussion on December 3rd related to Mr. Burke's —

A. — which was a carry over from the earlier meeting that he had indicated he had incompetent management and he had to make some changes to bring the Standard Kollsman Division into the black.

Q. What did he say about Mr. Burke's incompetency or inability to properly account for profit and loss?

A. Only that that was the statement that was made. We had no basis for questioning it.

Q. Well, to what discussion did you have reference when at Page 46 of the transcript you 162 refer to the December 3rd meeting in regard to some discussion or disagreements between Mr. Burke and Mr. Huarisa in regard to accounting procedures?

A. In talking about the write offs and how you accumulate write offs. But this was a general discussion.

Q. I understand it was a general discussion, but what was said on December 3rd about that subject?

Mr. Montgomery: If you recall.

By The Witness:

A. If I recall. I recall only a general reference to it.
By Mr. Harris:

Q. And the general reference was that there was some disagreement between Mr. Burke and Mr. Huarisa in regard to the subject of write offs?

A. Over the matter of how to manage the Division and its resultant profit and loss, of which write offs is a part.

Q. I see. But you don't exactly recollect in 163 substance what Mr. Huarisa said his disagreement was with Mr. Burke in that regard?

A. No, sir.

Q. Except that there was some?

A. No, sir, I do not.

Q. Did he tell you how that difference of opinion between he and Burke on the subject of write offs had been resolved?

A. No, sir.

Q. Did he tell you whether or not it had been resolved?

A. Only to the extent with the changes that had been made he now was bringing the Kollsman Instrument Division — no, let me correct that. Only to the extent he had now turned the Kollsman Instrument Division around.

Q. Did either of you or Mr. Ethington ask what Mr. Burke's position was in regard to the write offs?

A. No. I did not. I cannot answer for Mr. Ethington.

Q. You don't recall whether or not Mr. Ethington

(3) Meeting of December 26, 1968

Ethington Trial Testimony

108 Mr. McSweeney: I will rephrase it in that way.

By Mr. McSweeney:

Q. What then with respect to this transaction in your view was the significance of earnings per share?

A. The significance of earnings per share in my view at that time was in adding the two companies together, you would add their total profits, and then the total number of shares that you would issue in the merger and see what your earnings per share would come out so that there would be no dilution in the surviving company's earnings. So, that would become very important in merging two companies together.

Q. Now, carrying on, sir, after the December 3, 1968 date, when was the next meeting or contact with either Mr. Huarisa or Mr. Meers?

A. The next meeting was on December 26th in the morning.

Q. Where did that meeting take place?

A. That took place in Rockford, Illinois, in Mr. Sadler's office.

Q. Would you please identify Mr. Sadler? I don't know that we have done that.

A. Mr. Sadler was the executive vice president of Sundstrand at that time. He is president now.

Q. Now, at this meeting on December 26th, who
109 was present?

A. Mr. Sadler, Mr. Huarisa, Mr. Schuette and myself part of the time.

Q. Can you state on this occasion, what did Mr. Huarisa say in this conversation?

A. Mr. Huarisa stated that he had brought with him new projections for Standard Kollsman for the year 1969. The new projections for the year 1969, he stated, would be \$2.13 per share rather than the \$2.41 per share.

However, he stated in his opinion that he still felt that the company would probably earn at least \$2.50.

Mr. Huarisa also stated that the 1968 earnings as reported were 86 cents a share, and that if there would be any adjustments, that in no case would there be any adjustments that would affect what had already been reported.

The Court: 86 cents a share for what period?

The witness: For nine months in 1968.

By Mr. McSweeney:

Q. Go ahead.

A. Mr. Huarisa then gave me a copy of the new projections. I stated that we had worked out a preliminary proposal for Sundstrand to merge Standard Kollsman into Sundstrand, and that it amounted to approximately \$32.25 per share. Mr. Huarisa stated that he did not believe that this was high—

**(4) Ethington personally directs Sundstrand's
survey team to investigate and report on
SKI's deferred costs**

Ethington Trial Testimony

361 By Mr. Fowle:

Q. Mr. Ethington, you knew in early January 1969 that SKI was carrying deferred pre-production costs on its books as an asset, didn't you?

A. Yes, I did.

Q. You learned this in December 1968, I believe, isn't that true?

A. Yes, I did.

Q. Now, you recall that one of the things that the finance group of the investigative team was instructed to do was to obtain an explanation and list of these deferred pre-production costs, don't you?

A. Yes, I do.

Q. Wasn't it you, yourself, Mr. Ethington, who gave that particular instruction?

A. Yes.

Q. To the finance team?

A. Yes, it was.

Q. You recall, don't you, that the survey of SKI began on January 7th or thereabouts?

A. That is correct.

Q. This was a Tuesday, if you will remember?

A. I don't know.

Q. Well, January 6th, the day that you were in the office—

**(5) By January 10, 1969 Sundstrand regards SKI
deferred cost and other problems as serious**

Sadler Trial Testimony

470 A. That is right, 600 shares.

The Court: He already answered the question and so that solves your problem, it would seem to me.

Go ahead.

By Mr. Freehling:

Q. Thereafter, on December 26, you had the meeting with Mr. Huarisa at Rockford that you have described, is that right?

A. That is right.

Q. And on December 30, you went out and purchased another 1,000 shares of Standard Kollsman stock for your own account, isn't that right?

A. That is right.

Q. I show you what has been marked as Defendant Sun-Huarisa Trial Exhibit 36-G—after first showing it to your counsel—and ask you, sir, if that's your confirmation of your purchase of 1,000 shares of Standard Kollsman stock on December 30, 1968?

(Tendering document to witness.)

A. (Witness examining) Yes, that is right.

Q. Now, Mr. Sadler, you told us about your visit to Kollsman Instrument Corporation on January 10, 1969; do you recall that?

A. Yes, I do.

471 Q. Before you went into the meeting that you have previously described with Mr. Katz and Mr. Allwarden and various others, there was a meeting of the Sundstrand group, was there not?

A. You mean the team people?

Q. Yes, the Sundstrand investigation and examination team?

A. Yes. There was one or more meetings; I don't know specifically which one you are referring to but there were preparatory meetings, yes, if that is what you have in mind.

Q. Well, there was a meeting, was there not, on the morning of January 10, 1969—

A. Oh, yes. I see.

Q. Attended by you to bring you up to date with what the team had discovered up to that point?

A. You mean this was an exclusive meeting with Sundstrand people before meeting with them?

Q. Sundstrand only—

A. Yes.

Q. —and no Standard Kollsman or Kollsman Instrument?

A. Yes, yes, absolutely.

472 Q. And at this meeting—let's call it a private meeting or Sunstrand meeting, Mr. Rothstein, whom you have already told us about, provided the rather disquieting information about the office union, isn't that right?

A. Well, that was one small portion of it, yes.

Q. But you told Mr. Rothstein that that was nothing new, you had learned about that in December when you were East with Mr. Huarisa, isn't that right?

A. Well, that particular thing, yes.

I said that it hadn't spread to Casco yet, as I believe it went, and that I had known about that particular item, yes, but not about the committeeman or many of the other practices, no one had told me about those.

Q. And at this private Sunstrand meeting Mr. Ross and Mr. Landstrom and Mr. Cascio, the financial group, gave a report or told you what they had been doing, isn't that right?

A. That's right.

Q. And they pointed out financial problems, did they not?

A. Yes.

Q. They told you about outstanding contracts on which the completion costs appeared troublesome?

A. Yes.

Q. And they told you about deferred preproduc-
473 tion costs, isn't that right?

A. Yes.

Q. And there were a number of other people who also reported at that Sunstrand meeting, isn't that right?

A. That is right, on the various other problems I have mentioned.

Q. And when you got done hearing all of these reports at the private Sunstrand meeting the morning

of January 10, you said that these things sounded pretty serious, didn't you?

A. I certainly did, yes.

Q. And you said that you should listen to the Kollsman Instrument people to see if there were any reasons for going ahead, isn't that right?

A. That is right.

Q. And then you went into the meeting with the Kollsman Instrument personnel that you have previously described?

A. That is right.

Q. And in the course of that meeting with the Kollsman Instrument personnel, some of the Sunstrand team members asked questions, did they not?

A. They did, yes.

Q. For example, they asked how there was going to be recovery of these preproduction costs, isn't that right?

A. Yes.

474 Q. And they asked why it was logical to defer these costs?

A. Yes.

Q. And there was discussion about cost overruns, was there not?

A. Potential cost overruns, yes.

Q. And claims against the Government?

A. Yes.

Q. And startup costs?

A. Yes.

Q. And there was considerable discussion about how substantial preproduction costs had been built up in connection with anticipated business, is that right?

A. Well, when you say "discussion," we asked questions and they told us how they felt they would circum-

vent the problems so there would be no degradation of earnings, so, yes,—

Q. All right.

A. So, they answered our questions. Yes.

Q. And they also told you what would happen if the orders were not received, isn't that right?

A. Well, I must say you are taxing my memory in terms of the degree of this. I am sure that there must have been some statements along that line but I, I can't, you know, at this moment tell you exactly what was said.

(6) By January 13, 1969 Sadler advises Ethington he is very pessimistic about SKI

Sadler Trial Testimony

475 Q. There was optimism expressed that the orders would come in, is that right?

A. There was optimism expressed by the Standard Kollsman people, yes, that they would get them.

Q. Then, Mr. Sadler, at the conclusion of that long day at Elmhurst, New York, on January 10, you and some of the team members flew home together in the Sundstrand plane, is that right?

A. That is true.

Q. There was you and Mr. Reif, Mr. Hucker, Mr. Rothstein and Mr. Erikson, isn't that right?

A. As best I remember, that sounds right. Yes, probably so.

Q. Of course, during that plane ride home, you had discussion about what you had seen and heard, isn't that right?

A. I am sure we spent some time on it. I would guess we would have.

Q. The five of you discussed doubts concerning future problems that would be faced if the companies merged, isn't that right?

A. I would say we probably did.

Q. And expressed concern about contract problems, lack of product synergism, and concluded that the answers that you had received had not been adequate to satisfy your doubts, isn't that right?

A. Well, it seems to me that your words are very close. I would say that our feeling at that point—we hadn't heard from the Midwest team in terms of what was going to happen there. We certainly had reached no final conclusion but we were discouraged because of the reasons that I gave here in my direct testimony. So, there was a feeling of pessimism at that point, I agree.

Q. Upon your return to Rockford, you gave a report to Mr. Ethington, Mr. Schuette and Mr. Olson about what you had seen and heard, is that not right?

A. Would you include the word "preliminary" because in no sense was it meant to be a final conclusion.

Q. No, but it was a preliminary report?

A. Sure.

Q. A report of what you had seen so far?

A. We had adjacent offices. It was logical I told him what was going on.

Q. Do you recall that January 10, 1969, was a Friday?

A. Yes. Yes, it was a Friday.

Q. You gave your report to Messrs. Ethington, Schuette and Olson the following Monday, January 13, isn't that right?

A. I couldn't at this moment tell you whether it was then or that Saturday or the next Tuesday. It depended on when someone was available.

There was no formal meeting if that is what you have in mind.

Q. Mr. Sadler, isn't it a fact that that report 477 was made on January 13, 1969?

A. Well, as I said, there was no formal meeting. I am sure that I talked to any and all of those people that were there and available at that time because they were all interested, but I am not conscious of any meeting where we all sat down in a formal sense. I would say basically the answer is yes but I just want to differentiate: no formal meeting as such.

Q. Whatever form the meeting took, it took place on Monday, January 13, 1969?

A. There was no formal meeting.

There was a formal meeting on January 20th.

The Court: Well, the discussions took place on the following Monday after your Friday return?

The Witness: Very good. That I buy exactly.

The Court: All right.

By Mr. Freehling:

Q. At that discussion, you told Messrs. Ethington, Schuette and Olson that you had doubts about the labor situation and you were disappointed concerning synergism and you were disappointed concerning future earnings of the company, isn't that right?

A. I would presume that is so, yes.

Q. And you recall that that is what happened, don't you?

A. It is a long time ago. I think that is what happened.

- (7) On January 20, 1969 Sundstrand concluded that SKI was carrying on its books over \$4,000,000 of uncovered preproduction costs

Ross Trial Testimony

619 Q. I am sorry. I am back now to the meeting on January 20 in the morning with the Sundstrand team.

You discussed deferred preproduction costs, did you not?

A. Yes.

Q. You told the team members how much was deferred, how much was written off and how much remained, isn't that right?

A. Yes.

Q. What did you say?

A. I don't recall the specific words nor the specific amounts but it is outlined in the document itself.

From what I said, I told them about the amounts they had on their books, the amounts they had amortized, what the estimated costs of completion were.

I told them about the program of KIC or Standard Kollsman to evaluate the programs on a quarterly basis; that at any time they felt there was an overrun, to write those off.

I am sure I told them about the fact that Mr. Werle had indicated they had written off \$600,000 in November 1968 or that month would have been profitable.

I am also sure I told them about the \$902,000 question where Mr. Ryan and Mr. Werle had stated that as a result of their program of amortizing the prepro-
620 duction costs starting with the first date of delivery, that under that program, they would amortize \$900,000 in 1968, but that as a result of the conversations with

their auditors, they would actually write off less than that.

Also, I am sure I told them that the Standard Kollsman personnel had continually assured us that they were going to get sufficient business to cover these preproduction costs.

Q. When you got all done—Were you through?

A. Yes.

Q. When you got all done stating that, you told the team that the company had \$4,700,000 of deferred preproduction costs on its books, isn't that right?

A. Would you give me that question again, please.

Q. I said when you got all through telling the team members what you just mentioned, you told the team that Standard Kollsman had incurred \$4,700,000 of deferred preproduction costs, isn't that right?

A. Yes.

Q. You told the team that only \$600,000 of that \$4,700,000 was covered by orders on the books, isn't that true?

A. Yes.

Q. You told the team that the remaining \$4,100,000 621 of deferred preproduction costs would have to be expensed at some point in the future, isn't that right?

A. I don't recall the conversation but I am sure that I told them that that would need to be amortized over the three-year period.

Q. You told the team that Standard Kollsman had not yet covered this \$4,100,000 of deferred preproduction costs, although company personnel said they would get future orders to cover these costs, isn't that right?

A. Yes.

Q. You told the team that the question remained as to whether they will or whether they won't get those future orders, isn't that right?

A. No.

Mr. Freehling: Your Honor, I am going to need just a moment, your Honor.

The Court: All right.

(Brief pause.)

By Mr. Freehling:

Q. Mr. Ross, your deposition was taken over the course of a number of days. Do you recall that?

A. Yes.

622 Q. On page 980 were you asked these questions and did you give these answers:

“Q. In your report wherein you indicated”—

In Meers' Exhibit 9, that was a deposition exhibit—“ . . . that of that 4.7 million development projects to be amortized, \$600,000 is covered by orders on the books. Did that relationship between orders on the books and deferred costs raise a question in your mind as to the ability of Standard Kollsman to amortize those costs?

“A. Yes, that's what we spent several hours asking Standard Kollsman questions about the previous two weeks.

“Q. And did you express your concern on that subject in the first meeting on January 20th?

“A. Yes, I am sure we said ‘They have not yet gotten them covered and they said they are going to get future orders.’ It is a question of whether they will get future orders.”

Did you give those answers to those questions?

A. I don't recall it, but that probably—I think that that is probably there.

Q. Did you make those statements at the team meeting on January 20, 1969?

A. I do not recall the specific words. I am sure I 623 indicated the amount that was covered and the amount that they had to get covered, or would have to amortize.

Q. And you also said that you had serious doubts about whether they would ever get the contracts to cover the balance, isn't that right?

A. I don't recall that.

Q. And there was discussion at this meeting of the team on the morning of January 20, 1969, about Standard Kollsman's calculated 1968 earnings per share for the first 11 months of the year, do you recall that?

A. I'm sorry, may I have that again, please.

(Question read by the reporter.)

By The Witness:

A. We knew what the 11 month's earnings were.

By Mr. Freehling:

Q. You knew that they were 84 cents per share?

A. Yes.

Q. And you knew that that was a decline from the reported 86 cents per share for the first 9 months of the year, is that right?

A. Yes.

Q. Now, Mr. Ross, following this team meeting on the morning of January 20, there was a meeting held with Mr. Ethington, is that correct?

A. That I attended?

Schuette Deposition Testimony

124 Q. Do you recall any other attempts to obtain information during December or January from a source other than Standard Kollsman?

A. No, sir.

Q. Now, there were several meetings held at Sundstrand on January 20th?

A. Right.

Q. Concerning the evaluation that Sundstrand had made of Standard Kollsman, is that correct?

A. That is right.

Q. Did you attend either or both of those meetings?

A. I did not attend the meeting of the team.

Q. The first meeting was a meeting attended by the men who were on the investigating teams?

A. Yes.

Q. And you did not attend that?

A. I did not attend that.

Q. Then was there a second meeting?

A. Yes, sir.

Q. Who attended the second meeting?

125 A. Mr. Sadler, Mr. Miller, Jim Ethington, and myself.

Q. Mr. Ethington had not attended the first meeting?

A. To the best of my knowledge, he did not.

Q. How about Mr. Sadler and Mr. Miller; had they attended the first meeting?

A. I know Mr. Sadler did.

Q. You don't know whether or not Mr. Miller did?

A. It is a reasonable assumption. He was a part of the team at that time. I do not know specifically.

Q. Relate for me as best you can the substance of the conversations the four of you had at the second meeting on January 20th.

A. That, in general, we should call off the merger, or any further attempts to proceed with the merger, I should say.

Generally, there were three basic problems. One was that we would not obtain the compatibility of products or the systems concept that we had envisioned.

126 The second was the potential difficult labor problems.

And the third was the overestimation of the earnings.

Q. Now, were these three things reasons given by one of the four of you for a conclusion that the merger negotiations should be concluded or broken off?

A. I did not get your question.

Q. You just told me about three reasons—

A. Yes.

Q. —leading to the conclusion that merger negotiations should be terminated.

A. Right.

Q. Did one of the four of you list these three reasons at the meeting, or was there a general discussion?

A. There was a general discussion of them.

Q. Who was it that talked about the existence of labor problems?

A. Mr. Sadler discussed it as a result of a
127 memorandum that had been prepared by our vice president in charge of personnel.

Q. What did he say specifically about that problem?

A. I don't remember specifically.

Q. Was there some discussion of a problem of lack of compatibility, do you say?

A. Yes, sir.

Q. Who was it that discussed that problem?

A. That was discussed between Mr. Sadler and I.

Q. What specifically was said on that subject?

A. That the product which they had did not have the technical content and did not have the product mix which would give us the systems capabilities that we desired.

Q. All right. Do you recall anything else specifically said on that subject?

A. In that meeting?

Q. Yes, sir.

A. No, sir.

Q. And someone discussed the overestimated earnings?
128

A. Yes, sir.

Q. For Standard Kollsman?

A. Yes, sir.

Q. Who discussed that?

A. Mr. Miller and Mr. Ethington.

Q. What did they say on that subject?

A. We got into the discussion of the deferments, the method of write-off and the probability of coming up with the earnings which had been projected.

Q. And after discussing the deferral and the matter of write-off, it was concluded that the probability of coming up with the projected earnings was not good?

Mr. McSweeney: I object to the question: Was it concluded. It is asking him for a conclusion which may have been something in his mind. The question should be confined to what was said.

Mr. Harris: Read the question.

129 (Question read by the reporter.)

By Mr. Harris:

Q. Is that correct, Mr. Schuette?

A. I refuse to answer.

Mr. McSweeney: You may answer the question if you can. I will tell you if I want you to decline to answer.

I am objecting to the question because of certain technical objections which I have stated.

The Witness: I see. Will you read the question again.

(Question read by the reporter.)

Mr. McSweeney: I did not mean to jounce it out of your mind.

By The Witness:

A. Yes.

By Mr. Harris:

Q. Did either Mr. Miller or Mr. Ethington say that it was their judgment that Standard Kollsman could not meet its projected earnings as a result of these two matters that you have referred to; that is, the defer-
130 ment and the method of write-off?

Mr. McSweeney: I am not going to object.

By The Witness:

A. Yes.

By Mr. Harris:

Q. Do you remember which one of them said that, or did they both say it?

A. It was a joint conversation.

Q. Do you recall anything specifically that they said about the deferments or about the method of write-off?

A. Nothing specifically.

Q. When you were talking about deferments, you were talking about pre-production costs which were deferred and carried on the books as assets, is that your understanding?

A. Well, I would have to answer that no, because it is much more encompassing than what you have asked.

Q. Okay. What was encompassing?

131 A. Well, it is just more than pre-production costs.

It is deferment of an accumulation of expenses that generally accompany any new product which you bring out in the aviation field. When you are working on a learning curve, it all depends how you defer it. Whether it is pre-production. There are a number of deferrals of different types.

Q. In any event, they are considered for or deferred, and the balance sheet effect of that is that they are carried as assets.

Mr. McSweeney: Now I object to that. Let me finish my objection. It is ambiguous whether you are talking or asking about what was said in conversation or some theory he has on deferral and pre-production costs.

Mr. Harris: I am talking about what was said in the meeting.

(Question read by reporter.)

Mr. McSweeney: He wants to know what was said at the meeting.

Mr. Harris: I will strike the question.

132 By Mr. Harris:

Q. The discussion that occurred at the meeting on the subject of deferrals was a discussion of deferred costs which showed up on the Standard Kollisman balance sheet as assets, is that correct?

A. I don't know. I am not an accountant.

Q. You don't know what the balance sheet effect was of the deferrals that were being discussed by Mr. Miller and Mr. Ethington?

A. Not specifically. Not specifically.

Q. Did either Mr. Miller or Mr. Ethington state an opinion as to what a more realistic projection of Standard Kollisman's earnings would be for the year 1969?

A. Yes.

Q. And what did they state in that regard?

A. I don't remember.

Q. Something under \$2.00, I take it?

A. Something under \$2.00.

Q. Do you remember whether it was under \$1.00?

A. I don't remember.

Sadler Trial Testimony

449 There was also the matter of the tuner that we had checked out. I had some people that I knew in

the industry and got a very good recommendation on the quality and acceptability of the Standard Kollsman tuner. This is a television tuner that they made and was a significant product item with them. But in investigating their facilities for manufacturing tuners, the work conditions in their Wisconsin operation were not good.

Mr. Huarisa told me that the solution to this problem was to set up a value-added plant along the border of Mexico. The competition had gone to Asia to build their tuners because of low labor. He said that we could do it through the Mexican thing.

Well, when we looked at the Mexican facility, it was nothing but a storefront, really—I will say an idea. I think it could have been developed all right, but it wasn't at that time. There would have been close-down costs in the Wisconsin plant to do it. There was a longer range question, about two or three years ahead, as to whether the value-added treatment was going to be continued to be allowed. So, this was a matter of concern to us that we felt made the merger not as attractive as we might otherwise had hoped that it would be.

Finally, there was some degree of question on the matter of earnings. We had probed this very deeply as best we possibly could with our team. We had several

financial people involved in the thing because we 450 knew they were having some problems on pre-production

costs and on cost overruns and some contract claims with the government and such. So, we tried to find out what we could. They gave us their rationales about what they were going to do to cover the situation and keep their earnings up and so on. Some of it we understood, and I think felt could be accomplished, but in aggregates it seemed to us they were slightly optimistic in their earnings projection both for 1968 and 1969.

Our team concluded—as you can well imagine, this is a terrible judgment thing because there was no way in three or four days that we could possibly get and digest enough information on the financial end—and we had no access to records except as they themselves provided them—to evaluate just how effective they would be in these things. So, our various team members had different thoughts about what type of earnings degradation there might be, but there was a general feeling that there would be some.

On the 1968 earnings, the team estimates on production and earnings were instead of \$1.16, they might be anywhere from a dollar to 80 cents.

In the case of the 1969 earnings, again, there was quite a spread, different people thinking different numbers. The most pessimistic of these was in the \$1.45 to \$1.50 range and other numbers above that.

Ethington Trial Testimony

362 A. Yes.

Q. The survey lasted until what, about January 16th, was it?

A. I believe it lasted until around the 16th of January.

Q. Now, do you recall that Mr. Sadler and Mr. Erikson went to New York and met with the investigating team on the morning of January 10th?

A. I know they went to New York but I don't remember what day.

Q. But they went to New York to meet with the full investigating team, did they not?

A. Not the full team. Just those that were in New York.

Q. Do you recall that Mr. Sadler came back to Rockford after he had had this meeting with the team on January 10th?

A. No, I don't recall the date.

Q. Well, you recall that he came right back after being there a short time?

A. Yes, but I don't recall it was January 10th.

Q. I see. Now, he gave you a report, of course, didn't he, as to what the investigating team told him at this meeting?

A. I can't recall that.

Q. You mean Mr. Sadler didn't give you any kind of report as to what he learned from the investigating team or a portion of it in New York during that week?

363 A. I don't recall that he gave me a separate report just on the New York findings.

Q. Well, did he give you and Mr. Schuette a report?

A. Yes, he did.

Q. The two of you?

A. Yes.

Q. He reported to both of you?

A. Oh, yes.

Q. Isn't it true that Mr. Sadler stated to you when he got back from this visit to New York with your investigating team down there that he had developed some doubts as to whether Sundstrand should pursue the SKI investigation?

A. I don't know whether it was after that trip that but he did say that to us, yes.

364 Q. Well, at about what time did he say this to you?

A. Some time in the middle of January.

Q. Didn't Mr. Miller advise you when he returned from New York — he was part of the team that was down in New York that week of January 7th, wasn't he?

A. I don't remember if Mr. Miller went to New York or to Elmhurst. I would have to check which one he went to.

Q. Didn't Mr. Miller tell you when he got back from New York —

A. I don't think he was in New York, sir.

Q. I may be wrong about that, Mr. Ethington.

A. I think you are.

Q. My co-counsel says that Mr. Miller didn't go to New York. So, let's forget that.

Hadn't you, yourself, in the middle of January begun to develop some questions about the wisdom of this acquisition of SKI?

A. In the middle of January, I did.

Q. I mean, on January 14, 1969, you placed an order with your broker to sell the 2,000 shares of Standard Kollsman stock that you had bought on December 27th, didn't you?

A. That is correct.

Q. Mrs. Ethington sold the few shares that she had on January 17th, didn't she?

365 A. I think that I sold those.

Q. Do you know whether Mr. Sadler owned any stock, SKI stock, in the middle of January?

A. I think in the middle of January, I knew that he did.

Q. I mean, do you know that he sold 1,000 shares of SKI stock on January 17th?

A. No, I do not, or did not.

Q. I hand you, Mr. Ethington, two documents marked Defendant Sun-Huarisa Trial Exhibit 20-A and 20-B for identification, purporting to be confirmations from Bear, Stearns & Company of sales on the account of you and Mrs. Ethington of SKI stock on January 14, 1969.

I ask you if you can identify them for me?

A. Yes, I can.

Q. Will you tell me what they are, please?

Are they what they purport to be?

A. Yes, they are.

Q. The whole survey team, the whole SKI survey team had a meeting on the morning of January 20, 1969, is that right?

A. I believe that is correct, sir.

Q. Were all of the members there so far as you know?

A. I do not know. I was not at the meeting.

366 Q. This meeting lasted most of the morning, didn't it?

A. I do not know how long it lasted. Mr. Sadler ran the meeting.

Q. Was Mr. Schuette at the meeting?

A. No, he was not.

Q. Mr. Ethington, let me show you three documents which I have had marked as Defendant Sun-Huarisa Trial Exhibit 21-A, 21-B, and 21-C for identification, purporting to be copies of an agenda for what I believe to be the team meeting on January 20 at 9:30 a.m.

I ask you if you can identify those for me?

A. I can read that they are the Standard Kollsman agenda.

Q. Well, aren't these three documents —

The Court: I assume counsel will agree that if you have got the documents, they are what they purport to be?

Mr. McSweeney: We don't have them here in the courtroom but we can check them and come back to them.
By Mr. Fowle:

Q. It is true, Mr. Ethington, isn't it, that one of these is a pencilled copy of the agenda for the meeting that morning and the other two are typewritten copies of the same agenda?

A. Well, I would have to read everything to see 367 if they are the same. One is written in longhand and two are typed. I don't know if they are identical or not.

Mr. Fowle: Don't we have a stipulation covering this?

The Court: Well, you aren't going to get any help from the witness. So, if you have a stipulation, that will take care of it.

The Witness: I would have to proofread it all.

The Court: We don't want to spend that time.

Mr. Fowle: Excuse me just a moment, Judge.

The Court: I will excuse you longer than that. We will take the morning recess. I will be back at 20 minutes to 12 sharp.

Mr. Fowle: Thank you.

(Whereupon, a brief recess was taken, after which the following further proceedings were had herein:)

Mr. Fowle: With the Court's permission, I would like to refer the witness again to the exhibits, Defendant Sun-Huarisa Trial Exhibits 21-A and 21-B for identification.

By Mr. Fowle:

Q. You know what these documents are, don't you, Mr. Ethington?

A. By reading them, I can see what they are, yes.

368 Q. Well, one of them was marked Exhibit DX8 and the other DX9 during the taking of a deposition. Do you recall that?

A. No, I do not recall that.

Q. But you know what these documents are?

A. Yes.

Q. They are the agenda for the January 20 meeting, are they not?

A. That is what it says, yes.

Q. Well, but that is the fact, isn't it?

A. I was not at the meeting. I don't know if the agenda was used or not.

Q. Well, this was prepared as the agenda for that meeting?

A. That is correct.

Q. There came a time in January 1969, did there not, when you learned or you were advised that as of November 30, 1968, SKI was carrying on its books as an asset approximately \$4,700,000 in deferred preproduction costs, is that true?

A. Could I have that question reread, please. I didn't hear the dates.

Mr. Fowle: Would you read it back, please.

(Question read.)

369 By The Witness:

A. Yes, I believe that is.

By Mr. Fowle:

Q. Now, you were told this on January 17th or January 20th, 1969, by either Donald Miller or Mr. Ted Ross, weren't you?

A. Yes, I was.

Q. Now, you did not attend, as I think you testified, the meeting of the investigation team on January 20?

A. I did not.

Q. As I understand it, there was a smaller meeting held after the team meeting in your office, am I right?

A. That is correct.

Q. We have referred to that sometimes in the past as the little meeting, have we?

A. I don't know, but that is what it was.

Q. Who attended this smaller meeting?

A. Mr. Schuette and Mr. Sadler and myself. I am not sure if Don Miller was there or not.

Q. How about Mr. Ross?

A. He might have been, too, but I am not sure if he was there or not.

Q. Well, at this smaller meeting, Mr. Sadler reviewed for you and Mr. Schuette what had taken place at the team meeting, is that correct?

. . .

373 Q. Was there any discussion of the so-called SKI-M125 claim against the United States Government?

A. Yes, I think there was.

Q. And what was that discussion?

A. I can't recall, I think it involved some lawyer by the name of Joy, but I don't remember the details.

Q. Well, now, didn't Mr. Sadler indicate to you that the team members were doubtful as to whether this claim would ever be paid by the United States Government?

A. Yes, that is true, that was their opinion.

Q. Now, was there — would you say that again?

A. That was their opinion.

Q. Well, now, there was discussion at this smaller meeting in your office of the 4.7 million of deferred production costs that SKI was carrying on its books, wasn't there?

A. Yes, there was.

374 Q. And it was mentioned at this meeting, was it not, that of the 4.7 million preproduction costs, only about \$600,000 worth were covered by orders on the books?

A. In their opinion, yes.

Q. And it was reported to you at this smaller meeting, was it not, that the survey team did not see how it would be possible for SKI to amortize these costs because they could see no production units to amortize them on, isn't that true?

A. That is correct.

Q. Now, at this time, at the time of this meeting, you were familiar with the various SKI programs in which production costs, preproduction costs, had been deferred, were you not?

A. I knew some of them, yes. I wasn't familiar but I knew some of them.

Q. You knew something about the CPU-46?

A. I knew about some of those, yes.

Q. And the AAU-19?

A. Yes.

Q. And the KS-200?

A. That doesn't ring a bell. That does not ring a bell with me right now but I knew some of the programs.

Q. Then you and Mr. Schuette and Mr. Sadler and Mr. Miller, if he was there, discussed the likelihood of SKI being able to amortize these expenses against the various programs and concluded that it was not going to be feasible, isn't that true?

A. In our opinion we did not know how they could do it.

Q. Well, in your opinion, yes, you concluded that it was not feasible, in your opinion?

A. Yes.

Q. Then you and Mr. Schuette had a still further meeting in your office, I believe, is that true?

A. That is correct.

Q. You met for an hour or so after this intervening meeting?

A. Yes, approximately.

Q. And there was further discussion at this meeting, was there not, about the 4.7 million of SKI deferred preproduction costs, was there not?

A. Yes, there were.

Q. I didn't hear your answer.

A. Yes, there was.

Q. By this time, Mr. Ethington, you certainly had no confidence in any of the representations that had been made to you, as you say, that SKI's 1969 earnings would be \$2.13 or \$2.41, did you?

A. I lacked confidence, yes.

376 Q. You had no confidence in those figures at all by January 20, isn't that right?

A. Not at that date.

Q. By that date you had no confidence?

A. That is right.

Q. In fact, someone on the investigating team had estimated that SKI's 1969 earnings would not exceed \$1.45 a share, isn't that true?

A. That is true.

Q. Now, you and Mr. Schuette and Mr. Meers and Mr. Huarisa had a meeting at the O'Hare Inn, is that correct, that same day?

A. That evening.

Q. January 20?

A. That evening, yes.

Q. It was a long meeting, was it not?

A. Several hours.

Q. And the purpose of this meeting was for the representatives of Sundstrand to tell the representatives of SKI that the negotiations would be terminated?

A. That is correct.

Q. Is that correct?

A. That is correct.

- (8) **Ethington and Schuette meet with Huarisa and Meers on January 20, 1969 to terminate merger negotiations with SKI and to explain the reasons**

Schuette Deposition Testimony

134 Q. Was someone specifically delegated that task?

A. Mr. Ethington was going to make these arrangements.

Q. Do you know, in fact, what Mr. Ethington did in that connection?

A. No, sir.

Q. Did Mr. Ethington get in contact with Mr. Meers either on the 20th or shortly thereafter?

A. There was a meeting established out at the O'Hare Inn, and that is all I know about it.

Q. When was that meeting held?

A. January 23rd. The evening of January 23rd. To the best of my recollection, it was in the evening meeting.

Q. Excuse me. What was that last?

A. It was in the evening meeting.

Q. Were there two meetings on the subject of Sundstrand withdrawing from the Standard Kollsman proposal?

A. Yes, sir.

Q. The first one was on January 23rd, to your 135 recollection?

A. As I recall it.

Q. And when was the second one?

A. Two days later.

Q. The first one was at Sheraton-O'Hare?

A. Right.

Q. The second one, where was it?

A. At the Chicago Club.

Q. Who attended the first meeting at the Sheraton-O'Hare?

A. Mr. Huarisa, Mr. Meers, Mr. Ethington, and myself.

Q. How long a meeting was that?

A. Three-and-a-half hours. Only because Mr. Meers was late getting there.

Q. I see. How late was Mr. Meers?

A. Forty-five minutes, I would say.

Q. If you can, relate for me the substance of the conversation between you, Mr. Huarisa and Mr. Ethington prior to the time that Mr. Meers arrived?

A. It was just a general conversation.

136 Q. You don't remember anything specific?

A. Not with relation to the subject matter, no.

Q. All right. Relate for me the substance of the conversation as you recall it, after Mr. Meers arrived?

A. We outlined to Mr. Meers and Mr. Huarisa the three points to which I have already testified. My part of it was to go into much more detail with regard to the compatibility. Following the January 21st meeting, I had a meeting with our Mr. Robinson who was a part of this team to get very specific, with regard to what we expect. What did they have, and how compatible were they.

Q. Is that the Mr. Robinson who was at United Control?

A. Yes, sir.

Q. So following the meeting that the four of you had on the 20th, you met with Mr. Robinson on the subject of compatibility or lack of compatibility?

A. That is right.

137 Q. Between Sundstrand and Standard Kollsman?

A. That is right.

Q. Then at the meeting at the Sheraton-O'Hare, Mr. Ethington also listed the three reasons for Sundstrand's disinterest?

A. That is right.

Q. And you discussed in details the —

A. The lack of compatibility.

Q. All right. What else was said at the meeting at the Sheraton-O'Hare?

A. We were discussing in general the labor situation.

Q. Who did that?

A. I would say jointly, Mr. Ethington.

Q. You and Mr. Ethington?

A. Right.

Q. That was a problem of increased labor rates that Sundstrand would face if it acquired Standard Kollsman?

A. Together with the presence of an office union and its possible spreading to our other operations.

138 Q. All right. And what else was said at the Sheraton-O'Hare meeting?

A. There was a discussion by Jim with regard to these deferred items and he went into detail with respect to them.

Q. What do you recall of that detailed discussion?

A. That the general conclusion was that we did not think that they were going to be able to earn the money which had been forecast.

Q. As a result of the deferred items?

Mr. McSweeney: Well, what is the question?

(Question read by the reporter.)

Mr. McSweeney: I object to the question. Are you asking what was said?

Mr. Harris: Yes.

Mr. McSweeney: All right. What was said, he is asking.

By The Witness:

A. Mr. Ethington discussed the deferred items
139 as well as the number of other accounting problems that he foresaw. I guess, problems is the word.

Q. What specifically were those problems that he said he foresaw?

A. I don't remember them.

Q. You don't remember anything other than the deferred items?

A. I don't remember, really, the detailed discussions because of —

Q. Do you remember any of the specifics that he said in relation to the deferred items?

A. I don't recall them in detail.

Q. Do you recall anything else that anyone said at the Sheraton-O'Hare meeting?

A. In chronology, I guess the next thing that was discussed was the disagreement with our analysis with — by Mr. Huarisa. And that generally he would like to convince us that these items were a lot less risk items than we felt that they were.

Q. Did Mr. Huarisa say that he disagreed with all three points of your analysis?

A. No.

Ethington Trial Testimony

376 Q. You had no confidence in those figures at all by January 20, isn't that right?

A. Not at that date.

Q. By that date you had no confidence?

A. That is right.

Q. In fact, someone on the investigating team had estimated that SKI's 1969 earnings would not exceed \$1.45 a share, isn't that true?

A. That is true.

Q. Now, you and Mr. Schuette and Mr. Meers and Mr. Huarisa had a meeting at the O'Hare Inn, is that correct, that same day?

A. That evening.

Q. January 20?

A. That evening, yes.

Q. It was a long meeting, was it not?

A. Several hours.

Q. And the purpose of this meeting was for the representatives of Sundstrand to tell the representatives of SKI that the negotiations would be terminated?

A. That is correct.

Q. Is that correct?

A. That is correct.

377 Q. Now, at this meeting, among other things, you or Mr. Schuette told Mr. Huarisa and Mr. Meers about some of the negative findings that your team had made, correct?

A. That is correct.

Q. And, among other things, you mentioned that some of these negative things were the deferred costs and other items that you thought would have to be expensed off, correct?

A. That is correct.

Q. Didn't you say to them that you could not see how the deferred costs could be amortized against any production units in the future?

A. That is correct.

Q. Now, Mr. Huarisa said, as I understand it, that he thought that he could show you how these costs could be amortized in the years 1969 and 1970, is that right?

A. That is correct.

Q. And asked for another meeting?

A. That is correct.

Q. Isn't it true, Mr. Ethington, that the principal reason you gave Mr. Huarisa and Mr. Meers for terminating the negotiations was that you could not see how the SKI earnings were going to be met because of the

tremendous write-offs that were going to be faced by SKI in your opinion?

A. No, that was not the principal reason.

Q. It was not?

378 A. No, it was not. It was the number third on my list. It was one of the three reasons.

Mr. Fowle: Excuse me a moment, your Honor.

The Court: Yes.

Mr. Fowle: I seem to have gotten tangled up in my notes.

The Court: Okay.

(Brief interruption.)

Mr. Fowle: I will be referring to page 83 of Mr. Ethington's deposition.

By Mr. Fowle:

Q. Let me ask you, Mr. Ethington, whether during your deposition this question, or these questions, were put to you and whether you gave these answers—

The Court: What page?

By Mr. Fowle:

Q. (Reading:)

"Q. Was there any other topic or subject discussed —"

The Court: Do you have the page? What is the page?

Mr. Fowle: Page 83.

The Court: All right.

By Mr. Fowle:

Q. (Reading:)

"Q. Was there any other topic or subject discussed at the January 20th meeting other than what
379 you have generally referred to as deferred costs and other items to be expensed?

"A. We talked about products and new developments and the business in general, and that we did

not think that we were going to get the synergism we originally thought, and there were various reasons, but basically, that we did not see how the earnings were going to be met because of the tremendous write-offs that were going to be faced by Standard Kollsman in our opinion."

Now, were those questions put to you and did you give those answers?

A. Yes, I did.

Mr. McSweeney: If the Court please, I am going to move to strike that as far as impeachment because that doesn't contradict —

The Court: Well, what do the words "but basically" mean?

Mr. McSweeney: I don't know. It's just the word "basically" —

The Court: Well, at least the answer may stand.

. . .

382 Q. Yes. And this, again, was a two- or three-hour meeting, was it not?

A. I think some period of time like that.

Q. And was it Mr. Schuette who talked on the subject of synergism or the lack of synergism at this meeting?

A. Yes, it was.

Q. And you, again, expressed a lack of confidence in SKI's earnings forecast, did you?

A. Yes, I did.

Q. And Mr. Erickson, I believe, spoke on the subject of preproduction costs, did he not?

A. Yes, he did.

Q. And questioned the likelihood of SKI's being able to amortize these costs over future production?

A. Yes, that is correct.

Q. And Mr. Ryan — you remember who Mr. Ryan was?

A. Yes, I do.

Q. I guess you identified him as the chief financial officer of SKI?

A. I believe that that was his title at the time.

Q. Mr. Ryan attempted to show you or show you and the others at Sundstrand how it would be that these costs, these deferred preproduction costs, could be deferred, could be charged off or expensed off against production in 1969 or 1970, is that true?

383 A. Yes, that they would be amortized, I believe is the word that he used.

Q. That they would be amortized in 1969 or 1970?

A. That is correct.

Q. But neither you nor Mr. Schuette were persuaded by what Mr. Ryan had to say?

A. We had no reason to doubt him but we just didn't know how they could do it.

Q. You had your own ideas?

A. I had my own ideas.

Q. And, at the close of the January 22nd meeting, you and SKI people agreed to make a public announcement that the negotiations had been terminated?

A. That is correct.

Q. And this was done?

A. That is correct.

Q. And, as I understand it, at this meeting Mr. Meers and Mr. Huarisa advised you that they would continue to search for a satisfactory merger partner?

A. That is correct.

Huarisa Deposition Testimony

213 Q. So the next contact on this matter was your meeting that evening with Mr. Ethington and Mr. Schuette?

A. Right.

Q. And according to your calendar pad that was in the Oxford Room of the Sheraton-O'Hare, is that where it was held?

A. Yes, sir.

Q. At six-thirty p.m.?

A. Yes, sir.

Q. Who was present?

A. Mr. Schuette, Mr. Ethington, Mr. Meers and myself.

214 Q. Okay; what was said at that meeting?

A. I think — I don't know whether Mr. Ethington or Mr. Schuette stated that they felt, number one, they were worried about the write-offs; they had pencil sketches of the write-offs, and I don't remember what they were. They felt that there wasn't enough new products in the Avionics Division that would help them in the aircraft industry; and third, that they felt that sooner or later we would get a nationwide bargaining and their rates were so much higher than ours that we would lose some of our profit potential.

Q. Labor rates?

A. Right.

Q. What else?

A. That's about the point of it.

Q. What did you say?

A. I told him that I was not prepared; if they had told me that that is what they wanted to do I would have brought figures of what they wanted in the way of that, and I recommended that we meet with Ryan so we could come back up to the figures that they were throwing at me.

Q. Did you have any figures there with you
215 that day?

A. No, I did not.

Q. What else did you say?

A. And they agreed to have a meeting a couple of days later, or the next day.

Q. What did Mr. Meers say?

A. I don't recall what he said.

Q. What write-offs did they say they were worried about?

A. I don't remember. They had a figure, but they were worried — I guess they were worried about all of them.

Q. Well, as of that time you hadn't taken any write-offs, had you?

A. But they had made a complete study, they knew as much as we did on it, they went through our entire books, they questioned everything in the write-offs; they knew as much as we did in write-offs; that if we didn't get the orders we would have to face the write-offs. They got all of that from our books.

Q. What did you tell them about the write-offs?

A. I said that we would have to sit down with somebody who knows more of the details than I do, and we would discuss it with them.

. . .

219 A. I didn't discuss it with anyone; I might have brought Neil Kennedy up-to-date, but I don't recall that I had; and I am sure that I called Ryan the next day and said "Will you get all the figures together and see what you have given Sundstrand, and let's break it down and see if they have got the same figures we have."

Q. Was Mr. Ryan then in New York?

A. No.

Q. Out here in the Chicago area?

A. Right.

Q. All right. So you had, then, another meeting with the Sundstrand representatives?

A. That's right.

Q. On the 20th, did you make the date for the next meeting?

A. I think we did.

Q. And that was on January 22nd, was it not?

A. That's correct.

220 Q. All right; who was present at the meeting on January 22nd?

A. Mr. Schuette, Mr. Ethington, Mr. Erickson, and I think Mr. Miller, Meers, Ryan and myself.

Q. That meeting was at the Chicago Club?

A. That's correct.

Q. Before going to that meeting, did you confer with Mr. Ryan as to what he was going to say or what he was going to present to the Sundstrand representatives?

A. Well, I asked him if he had all his figures in the write-offs and the labor figures, and if we had any of their labor figures, which he did, and
221 that's about it. I told him what to expect.

Q. And did you tell him that your view was that the points that Sundstrand made were not well-founded and you wanted to demonstrate to them why they were not?

A. Yes, basically that's it.

Q. All right.

Now, at the meeting, what was said and by which person?

A. Well, we took point by point, and they took job by job; Mr. Ryan and Mr. Miller reviewed them, I guess, with the help of Ethington and Schuette.

Q. You were there, too?

A. Yes, sir.

Q. Well, what jobs did they take?

A. They took all of them that they had brought up — I can't tell you which they are, every one that Mr. Ethington questioned was brought up.

Q. You mean Mr. Ethington enumerated specific jobs which he questioned?

A. I don't know whether they were specific jobs or specific dollars that he questioned.

Q. Well, in other words, you mean at the meeting on January 22nd Mr. Ethington questioned either 222 specific jobs or specific dollars?

A. That's correct.

Q. What do you mean by questioning specific dollars?

A. The amount of dollars that he figured we would have to write off.

Q. I see. Which ones — do you recall now as to what Mr. Ethington said?

A. He said that he had no confidence that we would get these jobs and we would be faced with a write-off.

Q. All right. Which ones did he name?

A. All of them that he had on his list. I can't tell you which ones they are; they were all of them.

Q. All that Mr. Ethington had on his list?

A. Yes.

Q. He had a list there?

A. Yes, he did; or Miller had a list: If it was Miller, I am not sure.

Q. Did you see the list, did he show it to you?

A. Yes.

Q. You read it?

A. I am pretty sure I did.

223 Q. You don't recall which jobs?

A. I said all of them that they question, and I turned it over to Ryan to answer them one at a time.

Q. Well, the list had all that they questioned, but what I want to know is what was on the list?

A. I don't know.

Q. You don't know?

A. No.

Q. Did you listen while Mr. Ryan explained to them why they were wrong?

A. Yes.

Q. You agreed with what Mr. Ryan said?

A. He knows more about it than I do; so I would have to agree with him.

Q. You didn't contradict him?

A. Not that I recall.

Q. What do you recall that Mr. Ryan said about any specific job?

A. He pointed out to them the future, the potential, and so forth.

Q. Well, with respect to the future and the potential of the jobs, wouldn't you know more about 224 that than Ryan?

A. He has been in on it, working with the Sundstrand people and working with our people, and they have been working together on it, and I am sure the Sundstrand people asked a lot more questions than Mr. Ethington did, so I think he was well equipped to answer the questions at that time better than I was.

Q. Well, if you don't remember specifically what Mr. Ryan said, was the gist of what he said that they would not have to take these write-offs because they would get orders?

A. He said that we are trying to get the orders. If we get the orders we would not have to write them off.

Q. Did he say if you didn't get the orders how much you would have to write off?

A. I think the figures were there, yes; I don't recall that — anything specific.

Q. What else was said at this meeting?

A. That's all I can remember. We went through the labor again, we went through the future products, and I think at the last moment Mr. Ethington said that he had no confidence in our projecting our profit, and he didn't think we could earn two dollars; that I 225 remember.

Q. And what else was said?

A. That's it.

Q. Did Mr. Ryan indicate at that meeting what Standard Kollsman was expected to earn in 1968?

A. Mr. Ethington and his group had a breakdown of the \$2.13 that you have a copy of.

Q. Well, that was for 1969, wasn't it?

A. '69, I am sorry.

Q. I was asking if Mr. Ryan indicated —

A. Absolutely not.

Q. — on January 22nd —

A. How could he when we were trying to discuss the write-offs?

Q. I don't know. I just asked the question, either he did or he didn't.

A. I am trying to put a logic to it.

Q. Well, did he indicate since this was the 22nd day of January, 1969, what your company expected to earn for 1968?

A. No.

Q. What did he say about how long you were going to wait before you determined whether to take the write-offs as of 1968?

226 The Witness: I think I answered that yesterday, that we would wait until we were ready to go to press, if we got the orders we wouldn't take the write-off.

By Mr. McSweeney:

Q. Now I am asking you, though, did Mr. Ryan say that in the meeting of January 22nd?

A. Not that I am aware of; he may have, but I don't know.

Q. What did Mr. Meers say at this meeting?

A. He mostly listened; I don't think he said much of anything.

(9) On January 23, 1969 it was announced publicly that merger negotiations were terminated

Ethington Trial Testimony

144 Mr. Meers stated that he did not think that the earnings were that important. I told him that I thought earnings were very important in a merger.

After Mr. Ryan and Mr. Huarisa had presented this, I had a written statement with me that I had tried to summarize: the reasons for calling the merger off. I had them in my notebook written out. I read those reasons. Basically as I can remember them, I read that the first reason for calling the merger off was some labor problems that we would have relating to the union; No. 2, the synergism of the two operations was not there; No. 3, that I was not comfortable with Standard Kollsman's ability to amortize these costs.

With that in mind, with those reasons, Sundstrand did not want to proceed with the merger.

Mr. Meers then stated that he would continue to work on effecting a merger for Standard Kollsman with other people. Mr. Huarisa also stated that he was working on a potential merger with another company.

Right now I can't recall anything more at that meeting.

Q. Well, did you respond to Mr. Huarisa's and Mr. Meers' statements that they were working on other mergers?

A. I said that we would be happy to cooperate and have our stock participate in the merger.

Q. What do you mean by have your stock participate?

A. Well, we had purchased a block of 223,000 145 shares of stock from Mr. Huarisa.

Q. Have the stock of SKI go into the merger, is that it?

A. Yes. It was now Sundstrand's, Sundstrand's SKI stock.

Q. Did you then announce to the public the calling off of the merger?

A. Yes, we did.

Q. When was that?

A. I believe it was done the next day but I am not positive.

The Court: I think this is probably a good time to recess unless you have got — what do you have, another notebook?

Mr. McSweeney: Just corroborative of that.

The Court: All right. Let's postpone that.

Mr. McSweeney: Sure.

The Court: Let's find out tomorrow morning when you gentlemen come in — I established a halfway precedent today but that is all it is — as to why there are not this type of evidence is corroborative and whether it is proper or not.

Mr. McSweeney: Yes, your Honor.

The Court: So, let's postpone that ruling until tomorrow.

Gentlemen, I don't want you sitting here each morning while I have some motions to dispose of. On the other hand, I don't want to be waiting for you when I get through with

IV. ETHINGTON AND SADLER DIVEST THEMSELVES OF THEIR SKI STOCK

Ethington Trial Testimony

364 Q. Well, at about what time did he say this to you?

A. Some time in the middle of January.

Q. Didn't Mr. Miller advise you when he returned from New York — he was part of the team that was down in New York that week of January 7th, wasn't he?

A. I don't remember if Mr. Miller went to New York or to Elmhurst. I would have to check which one he went to.

Q. Didn't Mr. Miller tell you when he got back from New York —

A. I don't think he was in New York, sir.

Q. I may be wrong about that, Mr. Ethington.

A. I think you are.

Q. My co-counsel says that Mr. Miller didn't go to New York. So, let's forget that.

Hadn't you, yourself, in the middle of January begun to develop some questions about the wisdom of this acquisition of SKI?

A. In the middle of January, I did.

Q. I mean, on January 14, 1969, you placed an order with your broker to sell the 2,000 shares of Standard Kollsman stock that you had bought on December 27th, didn't you?

A. That is correct.

Q. Mrs. Ethington sold the few shares that she had on January 17th, didn't she?

365 A. I think that I sold those.

Q. Do you know whether Mr. Sadler owned any stock, SKI stock, in the middle of January?

A. I think in the middle of January, I knew that he did.

Q. I mean, do you know that he sold 1,000 shares of SKI stock on January 17th?

A. No, I do not, or did not.

Q. I hand you, Mr. Ethington, two documents marked Defendant Sun-Huarisa Trial Exhibit 20-A and 20-B for identification, purporting to be confirmations from Bear, Stearns & Company of sales on the account of you and Mrs. Ethington of SKI stock on January 14, 1969.

I ask you if you can identify them for me?

A. Yes, I can.

Q. Will you tell me what they are, please?

Are they what they purport to be?

A. Yes, they are.

Q. The whole survey team, the whole SKI survey team had a meeting on the morning of January 20, 1969, is that right?

A. I believe that is correct, sir.

Q. Were all of the members there so far as you know?

A. I do not know. I was not at the meeting.

Sadler Trial Testimony

479 By Mr. Freehling:

Q. Mr. Sadler, you recall, I am sure, that you had the pleasure of testifying in this case once before at the trial then before Judge Hoffman. Do you remember that?

A. Yes, I sure do.

Q. At page 1919 of the transcript, you were asked the following question and you gave the following answer:

“Q. What was the date of your conversation or conversations with Mr. Schuette and Mr. Ethington upon your return to Rockford?

“A. The 13th of January, 1969.”

Do you recall that?

A. Yes, I do. You have tossed in Olson. That is my problem. I don't know if he was there or not.

Q. I see. Well, I am sorry.

You reported to Mr. Ethington and Mr. Schuette on January 13th, 1969, is that right?

A. Yes. No question about that. Yes.

Q. I am sorry. It was at that report or discussion with Messrs. Ethington and Schuette at least that you talked about your doubts about Standard Kollsman, is that right?

A. Yes, I am sure I did.

Q. And your disappointment?

A. Yes.

Q. Then on January 17th you went out and sold 480 1,000 shares of your Standard Kollsman stock that you owned for your personal account, isn't that right?

A. Yes, that is right.

Q. After first showing it to your counsel, I show you Defendant Sun-Huarisa Trial Exhibit 36-A and -B.

I ask you whether those are the confirmations of your personal sale of 1,000 shares of Standard Kollsman stock on January 17, 1969.

A. Yes, that is it.

Q. On January 20, 1969, there was a meeting of the survey team, was there not?

A. Yes, there was.

Q. At that meeting Mr. Ross reported about earnings at Kollsman Instrument Corporation, did he not?

A. Yes, he did.

Q. He said there were serious questions for future earnings at Kollsman Instrument Corporation, isn't that right?

A. Well, I am sure he talked about the problems there.

When you say "serious questions," you know, I am not sure about those words but it was something like that. He certainly expressed concern about the earnings, yes. I would say that.

Q. Mr. Miller also gave a financial summary regarding the whole company of Standard Kollsman, isn't that right?

A. Yes.

V. RESPONDENTS ARGUED REPEATEDLY TO THE DISTRICT COURT AND TO THE COURT OF APPEALS THAT SUNDSTRAND OFFERED NO EXPLANATION FOR ITS PURCHASE OF THE BURKE STOCK OTHER THAN ITS UNFOUNDED BELIEF THAT IT WAS LEGALLY OBLIGATED TO DO SO

(1) Excerpts from Respondents' Pre-Trial memorandum at the first trial

5 As will appear throughout the trial, this case has some puzzling aspects. The most perplexing of all—which must await an explanation by Sundstrand—is why Sundstrand elected to exercise an option to purchase 223,190 shares of SKI stock for over \$6.3 million after completing an intensive survey which reached negative conclusions about SKI's financial condition and future business prospects. Sundstrand will argue that the agreement pursuant to which the option rights were transferred from Huarisa to Sundstrand, *required* Sundstrand to exercise the option and to complete the purchase of the Burke stock. We submit that the documents attached to the complaint show on their face that this was not the case.

(2) Excerpts from Respondents' Pre-Trial memorandum at the second trial

6 Six years of litigation have failed to uncover the
reasons why Sundstrand exercised its option to purchase a 10% interest in a company whose financial condition and business future Sundstrand thought so unsatisfactory. Corporate acquisition negotiations had been terminated two weeks earlier. Sundstrand was under no
7 obligation to purchase the Burke stock. The market price of SKI stock on February 6, 1969 was about \$5.50 below Sundstrand's option price of \$30 per share.

Moreover, senior Sundstrand executives demonstrated that they did not want to own SKI stock personally. Two of them, Sundstrand's president James Ethington and its Executive Vice President Carl Sadler, had secretly bought SKI stock in late December, before news of the proposed acquisition was made public. They unloaded most of their shares in mid-January 1969, just before the public announcement that acquisition negotiations had been terminated.

(3) Excerpts from Respondents' brief in the Court of Appeals

49 It must be concluded that there is no explanation in the record for Sundstrand's purchase of the Burke stock on February 6, 1969, other than the unfounded belief that there was a legal obligation to purchase it.

(4) Excerpts from Respondents' reply brief in the Court of Appeals

13 We renew our argument (Sun-Huarisa Br. 44-49) that, except for a supposed but non-existent legal obligation, Sundstrand offered no evidence whatever as to what caused it to purchase the Burke stock on February 6,

1969, two weeks after the avowed reason for buying it had disappeared (Ethington Tr. 131, 328-338). We also renew our argument that the loss of which Sundstrand complains in this case was caused entirely by its own imprudent conduct. Sundstrand has failed to refute these arguments.

(5) Excerpts from Respondents' answer to Sundstrand's petition for rehearing in the Court of Appeals

From the very outset of this litigation Sundstrand and its counsel have asserted unequivocally that Sundstrand was legally obligated by the January 9, 1969 agreement with Huarisa to complete the purchase of the Burke stock on February 6, 1969.

• • •

Moreover, Sadler, Sundstrand's president, testified that Ethington (Sadler's predecessor as president of Sundstrand) told him that Sundstrand would purchase the Burke stock because 'our counsel feels we are obligated to buy the stock.'

As a matter of fact, the record in this case supports no explanation other than Sundstrand's mistake of law.

VI. DEPOSITION TESTIMONY CITED BY THE COURT OF APPEALS AT 553 F.2d p.1050, n.35, THAT IS IN THE RECORD ON APPEAL BUT NOT IN THE TRIAL RECORD

Ethington Deposition

559 Q. On January 20, 1969, did you discuss with anybody the Burke shares?

A. Not that I can remember.

Q. Did you say anything to Mr. Huarisa or Mr. Meers?

A. On the 20th?

Q. On the 20th about, the Burke shares?

A. Not that I can remember.

Q. Did you personally consider what, I mean upon making your decision not to go ahead with the merger, did you consider what you were going to do about the Burke shares?

A. Yes.

Q. What did you consider about it?

A. To exercise our legal document and agreement that we had made.

Q. Did you discuss that with anybody?

A. Our legal counsel.

Q. When?

A. Somewhere around that date.

. . .

565 Q. You say you went over the reasons. Will you state what you told Mr. Olson on that subject?

A. I cannot recall. I cannot recall.

Q. What did Mr. Olson say about the reasons, if anything?

A. Mr. Olson felt that if our team did not think we should go through with it, that he did not, either. And he was reasonably happy that we were not going to go through with the deal.

Q. Did he say why he was reasonably happy?

A. No, he did not.

Q. Did you mention, was there any mention in this conversation with Mr. Olson about the Burke stock?

A. Not that I can recall.

Q. Did you discuss with anybody other than Mr. Pitte as you have stated whether or not to go through

with the purchase of the Burke stock? After what
566 you had learned from the team?

A. Yes, I did.

Q. With whom?

A. I reported back to our management committee that we felt we had a legal and moral obligation to proceed with buying the stock and saw no way of breaking the agreement.

Q. When was that?

A. Some time around January 22nd or January 23rd.

567 Q. Was that a meeting of the Management Committee?

A. I don't know if it was done at a joint meeting or individually, but it was done at that time. It was not an official meeting.

Q. Did you say this to these men at one time at one official meeting?

A. I do not remember; I do not remember if they were all together at one time or if it was done separately, but they were all notified.

Q. Who was on that management committee?

A. Mr. Olson, Mr. Schuette, Mr. Sadler, Mr. Gustafson and myself.

Mr. McSweeney: Was Rothstein there?

The Witness: He is on the Management Committee, but not for this decision.

Mr. McSweeney: He said, "anyone else." We have listed these people before.

The Witness: Yes.

Mr. McSweeney: Anyone else that you know of?

The Witness: Not that I recall.

Mr. Schilling: I think you are referring to the
568 inside directors.

The Witness: That is correct.

By Mr. Kullby:

Q. You had an inside directors' meeting?

A. No, these people are called inside directors that I have named.

Q. They are employees of the company?

A. They are employees of the company.

Q. What did you say to Mr. Olson?

A. What?

Q. Do you know where you were when you spoke with Mr. Olson on the subject of the Burke stock, whether you should go ahead with it?

A. No, I do not.

Q. What did you say to him?

A. I told him that we were advised that we had to proceed with the agreement that we had made.

Q. What did he say?

A. That we would have to honor our obligations.

Q. At that point you had not spent any money on this stock, had you?

A. We had committed to spend.

Q. You had not delivered any money?

569 A. No, we had not.

Q. You had not delivered any stock?

A. No, we had not.

Q. What did Mr. Olson say?

A. I answered that question.

Q. I am sorry.

A. That we would have to honor our agreement.

Q. Was anybody else present?

A. I don't remember any. I stated previously I don't remember if we were in a group or if I did it individually.

Q. Was this before or after the meeting at the Chicago Club?

A. It was probably right after. The next day after.

Q. Did you speak to each of these men?

A. Yes, I did.

Q. You, personally?

A. Yes, I did.

Q. What did you say to Mr. Sadler?

A. The same thing I said to Mr. Olson.

Q. What did Mr. Sadler say?

A. That we would have to go ahead with the 570 deal if that is our legal obligation.

Q. Did you mention at that time or did any of these two men we have asked about so far, Olson or Sadler, or any mention at those conversations about the market price of Standard Kollsman stock on January 22nd or 23rd?

A. Not that I can recall.

Q. Do you recall what the market price was?

A. No, I do not.

Q. You did not take that into account in your thinking on that subject?

A. It would not have made any difference. I had a legal obligation so the market price of the stock at that time could have no influence over what I had to pay for the stock.

Q. You use the words "moral obligation." What do you mean by that?

A. Legal and moral, I said.

Q. Yes, what do you mean by "moral obligation"?

A. We had made a deal with Mr. Huarisa and because we were interested in the merger that we would buy the shares of stock. And we signed a legal agreement to do so. And we made a commitment to him that 571 the reason we were going to buy this is that we were going to proceed with the merger and in good

faith, thought it was going through. And I consider this a moral obligation.

Q. To utilize Sundstrand's funds to buy something which already was a million and a half dollars less than \$30 a share?

A. This part was a legal obligation.

Q. Whose moral obligation?

A. I felt a moral responsibility. I am sure the integrity of our other officers probably would, too, but I cannot answer for them.

Q. What did Mr. Schnette and you talk about on the subject of the Burke stock?

A. The same thing. That we were committed to buy it legally. I can say that I was not happy.

Mr. McSweeney: He has got a luncheon engagement, but he will be back.

The Witness: But I will be back by two.

(Deposition continued to the hour of 2:00 o'clock, of the same day, Friday, October 31, 1969.)

573 JAMES ETHINGTON, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination (resumed)

By Mr. Kullby:

Q. Before we recessed for lunch, Mr. Ethington, we were talking about moral and legal obligations. Who did you feel you had a moral obligation to?

A. Mr. Huarisa.

Q. To whom did you feel you had a legal obligation?

A. Mr. Huarisa.

Q. It was not Mr. Huarisa's stock you were buying, was it?

A. Yes.

Q. Mr. Huarisa was not going to make any money on that. You knew that, didn't you?

A. Yes.

Q. So what moral obligation did you feel you had to Mr. Huarisa?

A. A moral obligation. I think I testified already to that, is that we had committed to tentatively plan 574 to go ahead with the merger. So this stock then became a part and parcel of that merger and therefore I felt that this was part of the total package.

Q. But you called off the merger?

A. I called off the merger and—after we had committed to buy the stock.

Q. So you thought you had a moral and legal obligation to Mr. Huarisa to spend six some odd million dollars of the company's money on something that was worth much less than that on the day you paid the money?

A. I don't think it was worth much less than that on the day we decided to continue to exercise the agreement.

Q. You say you read the Wall Street Journal every day, isn't that right?

A. Yes.

Q. You check the stock price on Sundstrand, do you not?

A. I tried to.

Q. At this time you were vitally interested in Standard Kollsman, were you not?

Olson Deposition

34 Q. Are you talking in the area when it was decided not to go forward with the acquisition when they reported reasons?

A. Whenever that was, when we decided not to go forward with the acquisition, one of the reasons was lack of confidence, their ability to predict with any accuracy, the lack of these other things that I have mentioned—many of the problems.

I might say we did have and still do have some confidence in ourselves to take something and prove it. That's part of acquisitions.

Q. In the context of conversations of deciding not to go forward with the acquisition, what conversation, if any, did you have with any Sundstrand personnel about the shares of stock?

A. We had a legal obligation to buy the stock.

Q. Who told you that?

A. Ethington.

Q. He told you that you had a legal obligation to pay six million dollars?

A. Yes.

Q. Who did he say told him that?

35 A. I don't know that. I presume our lawyers.
Mrs. Hall: Would you read that response?

(Answer read.)

By Mr. Kullby:

Q. Didn't they show you the papers which are attached to that agreement that you don't have to pay anything more after you pay the down payment? Did the lawyer point that out to you?

A. I don't think so.

Mr. Montgomery: You mean did he point out the pages of the agreement?

Mr. Kullby: I am asking him whether he had any conversation where anybody pointed that out to him.

The Witness: I don't think I understand your question.

By Mr. Kullby:

Q. I am asking whether you had any conversation with Ethington, or Schuette, or whoever you had any conversations that—

A. That we didn't have to buy the stock?

Q. You said you had a legal obligation to pay six million dollars of the company's money.

A. That's right. We didn't know the whole effect of this thing at that time. You understand, we
36 would have probably abrogated the agreement and take the chances of being sued had we known what we know now.

Q. And if you had no chance of being sued for not—

A. I don't know.

Q. —not going ahead with the payment of six million dollars, would you have not paid it?

Mr. Montgomery: It is a hypothetical question, "wouldn't have any chance of being sued."

The Witness: I don't know.

By Mr. Kullby:

Q. Who did you have conversations with about chances of being sued for not paying the six million dollars?

A. I didn't say I did, did I?

Q. I thought you indicated that you were told that you had a legal obligation.

A. That's right. I was—it was so presented to the board. I don't know what the minutes say. We still felt the stock was—while we didn't think we were going ahead with it, we thought it would be all right.

Q. You say it was presented to the board that
37 you had an obligation?

A. I'm sure it was.

Q. To pay the entire six million dollars, in excess of six million dollars?

A. Whatever it was, whatever the payment was.

Q. Who said that?

A. I would presume that Schuette presented it, his recommendation to the board.

Q. Had there been a board of directors' meeting?

A. There was one in February sometime.

Q. Between January 8, when you had the conversation over the telephone with Mr. Ethington, on February 14—

Mr. Montgomery: I think that the date of the conversation was January 6.

By Mr. Kullby:

Q. Okay, January 6. I didn't mean to put—

A. I don't think there was an official board meeting, but there was a polling of the board.

Q. About which you told us?

A. Yes.

Q. And the first board meeting was the one on February 14.

38 A. I presume that's correct.

Q. I take it you were present at that meeting.

A. Yes.

Q. Would you tell us to the best of your recollection what was said about the purchase of the stock, the Standard Kollsman stock at the board meeting of February 14, and who said it?

A. I don't remember any detailed comment on it. See "Mr. Schuette reviewed the background associated with the preliminary acquisition discussions on S.K.I. and the reasons for not proceeding with acquisition."

Q. Did he say what the reasons were?

A. I'm sure he did. Didn't you talk to him?

Q. I'm asking what you remember, Mr. Olson.

A. I don't remember what he said. I'm assuming he gave a reason.

Q. Did he reiterate what Mr. Miller had previously told you about?

A. I don't remember what he said.

Q. What he thought the earnings of Standard Kollsman would be?

A. If he had them, he would have presented—

. . .

40 Q. Well, do you recall their reporting to you about what they were going to tell Huarisa when it was decided that you were not going to go through with the acquisition?

A. I don't recall. I presume they did report. I'm sure they told me that. They asked my advice and that sort of thing, but—

Q. Did any of the board members ask you questions as to—at the February 14th board meeting—

A. If they are not recorded, I don't remember if they did or didn't.

Q. Before that board meeting, did you have any conversation with anybody about whether or not the Sundstrand check should be issued—

A. I presume—

Q. —in excess of six million dollars for these Standard Kollsman shares?

A. Oh, I'm sure we discussed our legal obligation, and I don't know when and I presume it would be with Schuette and Sadler and Ethington.

Q. Do you know when the check was issued?

A. No.

Q. Did you have any discussions with Mr. Swanson about.

. . .

68 The Witness: Take two or three days there, because sometimes out of town and I'll call again.

Mr. Schilling: Do we get an internal record of that?

The Witness: No. I write a memo.

Mr. Schilling: No. I mean does your switchboard?

The Witness: None. I don't know.

Mr. Schilling: I don't know. I'll check that.

Mr. Montgomery: Off the record.

(Discussion had off record.)

By Mrs. Hall:

Q. Mr. Olson, I believe you testified that at some point in time Mr. Ethington told you that Sundstrand had a legal obligation to pay for this block of stock.

A. Yes.

Q. Did you question him about that statement?

A. I don't recall. It may seem funny, but we don't question each other on things like that. Thirty years of a good record kind of . . . you know. I think a new person I would question.

Q. I believe you made a statement to the effect that if you had known the whole effect at the time, 69 you might not have paid the money but you might have—

A. Risked the lawsuit. Of course, that's hindsight. I would go to our attorneys and see what—what our position was.

Q. But you didn't do that at that time?

A. No, I did not.

Q. And why didn't you?

A. Because I didn't know about this subsequent Ernst & Ernst report.

Q. So the thing which you didn't know at that time was the Ernst & Ernst report?

A. That was the major thing we didn't know and we didn't know anything else continued to—let's see. The earning statement came out in April, I believe, for '68, which was different than what we had been led to believe.

Q. Anything else?

A. I don't think anything else. I think they are the basic things.

Q. You said that you looked at portions of the depositions of Mr. Ethington and Schuette.

A. Ethington primarily.

Q. Anyone else?

A. No, I don't think so.

Pitte Deposition

96 A. Yes, there was. Mr. Kennedy had indicated that he did not know where in the event of a fight, he did not know where some of these blocks would end up, on which side.

Q. Anything else on the subject of blocks favoring or opposing the merger that you can recall?

A. No, I don't know.

Q. You stated, according to my notes, Mr. Ethington concurred in the advice that you gave him, namely, giving serious—well, I guess giving serious consideration in bailing Mr. Huarisa, is that correct?

A. That's correct.

Q. Is that the advice that Mr. Ethington concurred in?

A. Yes, sir.

Q. And Mr. Ethington said that someone should proceed to work out the details, is that correct?

A. That's right. He and I then told—suggested that—I don't know whether it was I suggested it, but certainly if I didn't, that it was with my concurrence—

97 I think I suggested Mr. Kennedy or he suggested that his office would undertake the first draft and that we would hopefully get the first draft before the close of business that day?

Q. You stated, according to my notes, that there was no question at that meeting, but Sundstrand was going to pay out 6.6 million dollars to acquire the Burke stock, is that right?

A. That's right.

Q. And you said that you stated at the meeting that it was important that Mr. Huarisa give notice to the Burkes or their agent that he was exercising his option, is that correct?

A. That is correct, but because this was part and parcel of this problem of assignability.

Q. Is that something that was said at the meeting?

A. Yes, sir.

Q. Do you recall anything more said on the subject of why it was important that Mr. Huarisa should give that notice?

A. Well, I irritated quite a bit on that. I think I gave that testimony this morning.

Q. I am only asking for testimony you haven't—

. . .

116 to assume on the law of averages and in view of our past practices that we probably were going to go through with the merger.

We then pointed out that the stock at that time of Standard-Kollsman was over \$30 a share on the New York Stock Exchange and we reviewed the fact that there obviously was interest on the part of others in Standard-Kollsman. Standard-Kollsman could be recognized as a target for a takeover bid and we related—to buttress this point, the conversation we had with Messrs. Kennedy and Huarisa that morning to this effect.

We then said that if contrary to our past practice our survey made us determine to back off of the acquisition

and that unlikely event of what our risks at that point.

We then decided—we then argued that those risks were minimal in view of the fact that if we publicly stated that we were no longer interested in proceeding with the merger after the survey deemed be reported back and there had been a management determination to that effect. That it was altogether probable that one or more of these other companies,

117 who had evinced some interest would proceed almost immediately to make their move to take control of this company and that accordingly with the stock up at its present posture the possibility that we were running any substantial risks in acquiring the stock at this time, if we later did not decide to proceed with the merger were minimal because we in turn as a stockholders of Standard-Kollsman, a 9.8 percent stockholder would be taken out of one of these other companies without a financial loss to Sundstrand.

After a great deal of discussion between the six of us on the phone, this presentation met with the approval of the other four and Mr. Olson as chief executive officer and chairman of the board was requested to contact immediately the other four outside directors on the telephone and inform them of our, of the stand of the inside directors in this regard.

That is pretty much it.

Q. Do you have any further recollections at this time of your conversation during that telephone call that you have not already related?

A. No.

. . .

167 By Mr. Freehling:

Q. Let me ask you this: Did you advise Mr. Saeks as of January 22, or thereabouts— Maybe I should strike that and ask you:

Can you tell us approximately when your conversation was with Mr. Saeks that we have been discussing?

A. Approximately January—approximately January 22.

Q. All right. Now, in your conversation with Mr. Saeks on or about January 22, 1969, was anything said to him concerning Sundstrand's commitment to acquire 223,000 shares of Standard Kollsman stock in light of the fact that the merger negotiations had been terminated?

Mr. Montgomery: Well, I object to the form of that question because it assumes that at that point in time Sundstrand had a commitment rather than a finalized purchase of this stock. To that extent it misstates the record.

Mr. Freehling: Well, let's find out whether any-168 thing was said concerning the commitment.

By The Witness:

A. Mr. Saeks was very definitely informed that there was no change in the part of the prior submission, which is Defendants' Exhibit 205, relating to the 223,190 shares. There was no change in that—of course what I am saying is that he was fully apprised that when the merger was scrubbed, this did not scrub anything relating to that block of stock.

By Mr. Freehling:

Q. Was he told anything in this conversation on or about January 22, 1968, as to whether the purchase by Sundstrand of 223,000 shares of stock had been completed?

A. I don't recall.

Q. You testified last time that during the—this is at Page 140 of your testimony—that during the week of January 13 you had a conversation with Mr. Kennedy concerning the January 9 agreement and concerning dis-

closure of it, and you said that, quote, "A copy of this—" and I am not absolutely sure what "this" is—

. . .

171 Q. Do you know when they became effective?

A. January 24, 1969.

Q. Now, I believe you testified that the next event involving you and the Sundstrand-Standard Kollsman matter and which fits within the guide lines set by your counsel as to matters on which you may testify, was on February 3, 1969, is that correct?

A. That's correct.

Q. What happened on February 3, 1969?

A. I had one or more telephone conversations with Mr. Hart of Pope-Ballard.

Q. Was anyone else on the line, to the best of your knowledge?

A. No, they weren't.

Q. Were you in your office during those conversations?

A. Yes, sir.

Q. Would you tell us, please, to the best of your recollection what you said to Mr. Hart and Mr. Hart said to you?

A. I believe I pointed out that under the 1967 pooling agreement between Mr. Huarisa and various members of the Burke family, by operation of the 30-day
172 right of first refusal, an additional sum on the purchase price had to be paid by the, I believe, 9th of February, or the 8th of February it must have been. In any event, it was 30 days after the payment of the 5 percent by Mr. Huarisa on, I believe, January 8. I talked to Mr. Hart in Mr. Kennedy's absence. He was on vacation in California, and Mr. Kennedy somehow had gotten to me—I don't recall—the fact that in his absence I should talk to Mr. Hart.

In any event, I reviewed with Mr. Hart what we had determined, in light of other circumstances, previous circumstances, that we had always planned to pick up the entire—or pay down the entire remaining amount, inasmuch as we felt that the matter should be kept as secret as possible from Sun Chemical and the Burke family. This goes back to the assignability point which I mentioned in my prior session.

I also told Mr. Hart that basically we certainly did not want to be left in a position, if we only paid down what was required—and I believe that was about \$1,200,-

000. Don't hold me to that, but it was around that 173 figure. I believe, according to the pooling agree-

ment—that if we just paid that amount, that it was very possible that there could be subsequent litigation by either Sun Chemical or the Burke family, working together or separately, to claim the 30-day right of first refusal which had ostensibly been exercised by Mr. Huarisa, was void, and that accordingly, if we had only paid one million two into the escrow, in accordance with the payment schedule of the pooling agreement, we really had nothing to show for it, and I thought this was a very dangerous thing, both from the standpoint of Sundstrand and for the purposes of Mr. Huarisa, who very definitely did not want to have these shares in any way in the hands of opposing parties.

I was stating this to Mr. Hart only because he was not too aware of the background, because I don't believe he had been really involved—at least I wasn't aware that he was involved—prior to the time he was substituting for Mr. Kennedy.

I desired that we work out a system to complete the transaction that week, and in view of all the background and circumstances, of course,

. . .

180 a half. It was on the second floor grill, and we, incidentally, bumped into Mr. Meers.

Q. Give us your best recollection of what was said at the luncheon meeting between yourself, Mr. Ethington, and Mr. Huarisa on February 10th, 1969.

A. Mr. Ethington and I explained to Mr. Huarisa Sundstrand's position with respect to the 223,190 shares that we had purchased from him.

While there was a great deal of talk at this luncheon, we—to summarize what we said—

Q. Well, please give us your best recollection if that is all you have.

A. I am. I am. I am.

I predicated this on the fact that there was a great deal of discussion. I mean, we hardly had time to eat we were talking so animatedly. Mr. Ethington and I told Mr. Huarisa that we were not in the business of buying stock interests of a company which had no relation to any proposed future merger into Sundstrand.

We stated that we felt a moral obligation to Mr. Huarisa, in view of all the circumstances, to hold onto this stock, but no longer than it was necessary, 181 since we had better uses for the funds.

We specifically stated that we already—Mr. Ethington stated that he already had been telephoned by a broker in the East—I believe it was Goldman, Sachs, but I am not certain—asking whether Sundstrand would be interested in selling this block. This was on the prior Friday, apparently, and that he had stated that the company at this point was not interested in disposing of those shares.

However, Mr. Ethington made it very plain to Mr. Huarisa that we were only holding these shares in order to give Mr. Huarisa time to effectuate a merger with another party, which would be a party satisfac-

tory to Mr. Huarisa and the management of Standard Kollsman, and in view of the fact that Sun Chemical now, on record, held about the same size block as Sundstrand, we recognized that Mr. Huarisa probably would have to move rapidly. We did not give him a time limit other than to say that we felt that we wanted to move this stock as soon as possible and in no event later than March 31.

Schuetz Deposition

304 Q. Let's try it over again. On February 6 there was a payment made by Sundstrand for the Burke family stock, is that right?

A. That is correct.

Q. When did you learn that payment was going to be made?

A. After it had been made.

Q. Were you consulted as to whether it should be made on January 6?

A. Yes.

Q. And not thereafter until February 6?

A. That is right.

Q. You can recall no conversation with Mr. Ethington between January 6, after the January 6 telephone call and prior to February 6 concerning whether Sundstrand should go ahead and make the payment?

A. As far as I was concerned we had made the
305 commitment and we were going to carry it out.

Q. My question to you, sir, was: Did you have any conversation with Mr. Ethington on that subject after January 6 and before February 6?

A. I don't remember.

Q. Do you recall the amount of the payment on February 6?

A. Approximately \$6,000,000 plus.

Q. Did you sign the check?

A. No, sir.

Q. Do you know who did?

A. No, sir.

Q. Do you know if it was paid by check?

A. It is in our Complaint. I don't know.

Q. Sir?

A. It is in our Complaint. I don't know how it was paid specifically. It is in our Complaint.

Q. Well, is it possible at Sundstrand that a \$6,000,000 check could be paid for securities without your approval?

Mr. Montgomery: What do you mean, is it possible that it could be? I object to that question. It is 306 ambiguous.

By Mr. Freehling:

Q. You did not give your approval on or about February 6 to the payment of the \$6,000,000, is that correct?

A. We approved the transaction and the transaction was made.

Q. Was there any discussion at any directors meeting or any management committee meeting between January 6 and February 6 concerning the payment of the \$6,000,000?

A. Not that I specifically remember.

Q. Were you aware on February 6 that it was not necessary to pay the entire \$6,000,000 on that date in order to continue to comply with the terms of the agreement?

Mr. Montgomery: Go ahead and answer.

The Witness: Will you read the question.

(Question read by the reporter.)

By The Witness:

A. No.

Q. Are you aware of that today?

307 A. Yes.

Q. When did you become aware of that?

A. I don't remember.

Q. Approximately, give us your best recollection.

A. Sometime after February 6. That is the best I can remember.

Q. Do you remember from whom you heard it?

A. Mr. Ethington and Mr. Ross.

Q. What did they say to you?

A. What did they say to me?

Q. Yes, sir.

A. Just that these were the terms of the agreement and this is what we had to do.

Q. Did they tell you it was not necessary to pay the full \$6,000,000 on February 6 in order to protect your rights?

A. Not specifically, no.

(Here follows discussion off the record.)

By Mr. Freehling:

Q. Now let me see whether this refreshes your recollection.

308 A. All right, refresh my memory.

Q. Mr. Ethington testified according to my notes, and I am not now quoting verbatim, this is pages 579 to 583 somewhere, "Between January 22nd and February 6th I had several conversations with Messrs. Schuette and Sadler concerning the purchase of Standard Kollsman stock."

Do you recall any of those conversations, sir?

A. Yes, sir. And they all related to this \$30.00 a share and the number of shares, yes.

Q. Did they relate to whether or not to go ahead with the purchase?

A. No. We had made the commitment. We are honorable people.

Q. What commitment had you made, sir?

A. That we were going to buy the stock.

Q. When was such a commitment made?

Mr. Montgomery: If you can recall.

By The Witness:

A. I can't recall.

Q. You don't recall when the commitment was made to acquire the stock?

A. I know when the telephone conversation was made, which was on January 6, but when the specific commitment was made, I was not there. I don't know.

Q. Did you discuss with Mr. Ethington whether you had a commitment to purchase the stock?

A. Yes.

Q. Was that during the period January 22 to February 6?

A. Yes.

Q. Did you ask Mr. Ethington whether you had a commitment?

A. Yes.

Q. What did he say?

A. Yes, we did have a commitment.

Q. Did he show you any document?

A. No.

Q. Did you ask to see any?

A. No.

Q. Did you ask Mr. Sadler whether Sundstrand had a commitment?

A. No, sir.

310 Q. Did you discuss the subject of whether Sundstrand had a commitment with anyone other than Mr. Ethington?

A. No.

Q. Who said that there was a commitment; was that Mr. Ethington?

A. Mr. Ethington.

Q. Can you tell us when that conversation took place, to the best of your recollection?

A. Shortly after he returned from his meeting on the 6th.

Q. What meeting was that? Oh, January 6?

A. January 6, yes.

Q. Did he ever say it again to you prior to February 6?

A. Say what?

Q. That Sundstrand had a commitment to purchase the stock?

A. Yes.

Q. When did he say it to you?

A. A number of times in a number of conversations.

311 Q. How many conversations, would you guess?

A. We talked to each other every day.

Q. On the subject of whether or not Sundstrand had a commitment to buy 223,000 shares of Standard Kollsman stock?

A. I have no idea how often he made that statement.

Q. Was there anyone else you talked to on the subject of whether or not Sundstrand had a commitment to purchase the Standard Kollsman stock? This is all prior to February 6.

A. I am sure that we discussed it in the corporate group continuously, but no specific date. After we made the commitment on January 6 we felt we were obligated to carry through.

Q. Did anyone tell you you had a legal obligation to purchase the Standard Kollsman stock? Did you ask anyone whether you had a legal obligation?

A. No, sir.

Q. Would it have influenced your thinking if you had found out you did not have a legal obligation?

Mr. Montgomery: Well, I am going to object 312 to that and advise him not to answer. That is purely a hypothetical question.

The Witness: I won't answer.

By Mr. Freehling:

Q. Were you aware of the price of Standard Kollsman stock at the time of the payment of the \$6,000,000?

A. Reasonably so.

Q. Do you remember approximately where it was?

A. No.

Q. Do you remember whether it was above \$30.00?

A. It was below.

Q. Do you remember how far below?

A. No.

Q. Did you ever discuss with any of the outside directors prior to February 6 whether Sundstrand had a legal obligation to purchase that stock?

A. No, sir.

Q. Do you know if anyone else did discuss that 313 subject with the outside directors?

A. No, sir.

Q. Prior to February 6?

A. No, sir.

Q. No, you don't know?

A. No, I don't know.

Q. You testified this morning about a board meeting on February 14, 1969, do you recall?

A. Right.

Q. You said that Mr. Ethington made some statements about a take-out?

A. That is right.

Q. And will you tell us what those statements were by Mr. Ethington?

Mr. Montgomery: Well now, he has been asked several times—

The Witness: I have already testified to that.

Mr. Montgomery: —about what Mr. Ethington said about that and I think he has repeated it a couple of times.

Mr. Freehling: I would like to have . . .

